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| 09/759,728      | 01/11/2001  | Elliot Schwartz      | 5168P001            | 2453             |

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HEIMLICH LAW  
5952 DIAL WAY  
SAN JOSE, CA 95129

EXAMINER

VAUGHAN, MICHAEL R

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2131

DATE MAILED: 08/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,728

Applicant(s)

SCHWARTZ, ELLIOT

Examiner

Michael R Vaughan

Art Unit

2131

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2,4.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

Claims 1-26 have been examined and are pending.

### ***Information Disclosure Statement***

An initialed and dated copy of Applicant's IDS form 1449, Paper No. 2 and 4, is attached to the instant Office action.

### ***Claim Rejections - 35 USC ' 101 Utility***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The language of the claims 1, 17, and 22 raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment, or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 USC 101.

***Claim Rejections - 35 USC ' 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10, 11, 14, 15, 22, 23, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Vellanki et al, hereinafter Vellanki (WO 98/34385).

As per claims 1, 14, and 22, Vellanki teaches initiating a first connection; evaluating the first connection for a response from a remote system indicating a successful first connection; initiating a second connection if a successful first connection is not established; evaluating the second connection for a response from a remote system indicating a successful second connection; initiating a third connection if a successful second connection is not established; and evaluating the third connection for

a response from a remote system indicating a successful third connection (page 20, lines 21-29).

As per claims 2, 15, and 23, Vellanki teaches the first connection, the second connection, and the third connection is selected from the group consisting of Transmission Control Protocol (TCP) connection, User Datagram Protocol (UDP) connection, hypertext transfer protocol (HTTP) connection, hypertext transfer protocol (HTTP) connection via a proxy connection, and Internet Control Message Protocol (ICMP) connection (page 8, lines 1-3).

As per claim 3, Vellanki teaches initiating a TCP connection comprises initiating a TCP connection to a predefined address and port (page 8, line 2).

As per claim 4, Vellanki teaches initiating a HTTP connection comprises initiating a HTTP connection to a predefined address using port 80 (page 8, line 2).

As per claim 5, Vellanki teaches initiating a HTTP connection via a proxy connection further comprises determining a likely proxy address and port (page 8, lines 3).

As per claim 10, Vellanki teaches using Internet Protocol (IP) (page 1, line 20).

As per claim 11, Vellanki teaches initiating a HTTP connection via a proxy connection further comprises determining a likely proxy address by sampling packets and extracting IP addresses (page 19, lines 13-22).

As per claim 25, Vellanki teaches initiating a HTTP connection via a proxy connection further comprises determining a likely proxy address by receiving information from a computer connected to the firewall (page 19, lines 16-22).

As per claim 26, Vellanki teaches that one the best protocol has been found to traverse a firewall, those parameters associated with that protocol are saved so that the same protocol may be implemented in the future (page 7, lines 20-24). This equivalent to updating the strategy of firewall traversal.

Claims 17-21 are rejected under 35 U.S.C. 102(a) as being anticipated by Harvey (USP 6,044,401).

As per claim 17, Harvey teaches: a main system coupled to storage (Fig 2, element 208); a communication subsystem coupled to the main system and a communication medium (Fig 2, element 214, 202); a packet examining subsystem coupled to the communication subsystem (Fig 2, element 210); and a database system coupled to the packet examining subsystem and the main system (Fig 2, element 213).

As per claim 18, Harvey teaches the packet examining subsystem extracts port information (Fig 3, element 314).

As per claim 19, Harvey teaches the packet examining subsystem extracts the port information based upon examining packet data content (Fig 3, element 316).

As per claim 20, Harvey teaches the packet examining subsystem extracts address information (col. 1, lines 58-60).

As per claim 21, Harvey teaches the packet examining subsystem extracts the address information based upon examining packet data content (col. 1, line 58).

***Claim Rejections - 35 USC ' 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the

subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-9, 16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vellanki in view of Harvey.

As per claims 6 and 24, Vellanki teaches determining proxy addresses and ports but is silent in explicitly using a packet sniffer to do so. Harvey teaches that sniffing packets useful in determining which ports of addresses are currently accepting network data (col. 1, lines 58-60). It would be advantageous to use a sniffer to determine which ports are open because it can try a wide variety of ports quickly.

In view of this, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the teaching of Harvey within the system of Vellanki because it would more quicker determine which ports to try to connect to on the server. One skilled in the art would have been motivated to generate the claimed invention with a reasonable expectation of success.

As per claims 7 and 16, Vellanki teaches sampling packets and extracting information from the sampled packets and saving the information (parameters) for future reference (page 7, lines 16-24). Vellanki does not explicitly name the place where the



parameters are stored a database. Harvey teaches saving gathered information about a network in a database (column 1, lines 60-63). Databases are well-known structure for organizing data on a computer system. In view of this it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the teachings of Harvey within the system of Vellanki because it would provide a manageable storage structure whereby data can be efficiently analyzed and retrieved.

As per claim 8, Vellanki teaches extracting TCP port information (page 21, lines 16-20).

As per claim 9, Vellanki teaches examining TCP packets for HTTP data (page 13, lines 1-5).

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vellanki in view of Cunningham et al, hereinafter Cunningham (USP 6219786).

As per claim 12, Vellanki does not explicitly teach using Ethernet with the TCP. Vellanki does teach computers using TCP connected to the Internet. Cunningham teaches that there are standardizations in the packetizing for the Internet (col. 7, lines 1-14). One such standard is an Ethernet packet comprising a TCP packet. In view of this

it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the teachings of Cunningham within the system of Vellanki because TCP packets are sent in Ethernet packets through the Internet.

As per claim 13, Examiner supplies the same rationale for the motivation to combine the teaching of Cunningham within the system of Vellanki. One would have to extract the Ethernet address to get to the data within the packet.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael R Vaughan whose telephone number is 703-305-0354. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on 703-305-9648. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MV

Michael R Vaughan

Examiner

Art Unit 2131

*E. Moise*  
EMMANUEL L. MOISE  
PRIMARY EXAMINER  
*12/11/2136*